

FEB 15 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUCIANO LOPEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73004

Agency No. A73-845-309

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 11, 2008^{**}

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order dismissing petitioner's appeal to the BIA as untimely.

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Respondent's unopposed motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam). Specifically, the regulations provide that an appeal to the BIA must be filed with the BIA within 30 calendar days after the rendering of an Immigration Judge's oral decision, and that a notice of appeal is filed with the BIA on the date the BIA receives it. *See* 8 C.F.R. §§ 1003.3(a)(1); 1003.38(b), (c). In this case, the Immigration Judge stated his oral decision on February 16, 2006, making petitioner's notice of appeal due on or before March 20, 2006. Petitioner's notice of appeal was not received by the BIA until March 21, 2006. Therefore, the BIA correctly determined that it lacked jurisdiction to consider petitioner's appeal. *See Da Cruz v. INS*, 4 F.3d 721, 722 (9th Cir. 1993). Accordingly, this petition for review is denied.

All pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.